

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	File No. EB-02-TC-120
Fax.com, Inc.)	NAL/Acct. No. 200232170004
)	FRN 0007-2970-47
Apparent Liability for Forfeiture)	

ORDER OF FORFEITURE

Adopted: December 31, 2003

Released: January 5, 2004

By the Commission:

I. INTRODUCTION

1. In this Order of Forfeiture, we assess a monetary forfeiture of \$5,379,000 against Fax.com, Inc. (Fax.com)¹ for willful and repeated violations of the Communications Act of 1934, as amended (Act), and our rules and orders. For the reasons set forth below, we find that Fax.com willfully and repeatedly violated section 227(b)(1)(C) of the Act,² as well as the Commission's rules³ and orders⁴ by sending unsolicited advertisements to telephone facsimile machines on behalf of its clients on 489 separate occasions. We also require Fax.com to file a report with the Enforcement Bureau within 30 days of this order regarding whether it has come into compliance with the Act and our rules and orders prohibiting unsolicited commercial faxes. This report, along with any additional complaints and information we may receive, will be used

¹ Fax.com, a California-based company that began operating in 1998, characterizes itself as a "fax broadcaster," transmitting messages to telephone facsimile machines on behalf of other entities for a fee. For purposes of this Order, "Fax.com" encompasses its president, Kevin Katz, as well as its other corporate officers, including Thomas Roth, Jeffrey Dupree, and Eric Wilson. In addition, Fax.com encompasses all affiliated entities, successors, and assigns of Fax.com, including, but not limited to, Tech Access Systems Corporation; Telcom Tech Support; Everglades Enterprises, Lighthouse Marketing, LLC; Impact Marketing Solutions, LLC; and Data Research Systems, Inc.

² See 47 U.S.C. § 227(b)(1)(C). Section 227 was added to the Act by the Telephone Consumer Protection Act of 1991, Pub.L. 102-243, 105 Stat. 2394, 2402 (1991), and is most commonly known as the "TCPA."

³ See 47 C.F.R. § 64.1200(a)(3). In *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14,014 (2003) (*2003 TCPA Report & Order*), the Commission amended the rules that govern telephone solicitations and unsolicited advertisements, including those sent by facsimile machines. In this Order, however, we cite to the rule sections in effect at the time of Fax.com's violations.

⁴ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order*, 7 FCC Rcd 8752, 8779 (1992) (stating that section 227 prohibits the use of telephone facsimile machines to send unsolicited advertisements).

to consider any additional appropriate enforcement action against Fax.com or entities on whose behalf Fax.com is acting.

II. BACKGROUND

2. The facts and circumstances surrounding this case are set forth in the Notice of Apparent Liability (*Fax.com NAL*) previously issued by the Commission, and need not be reiterated at length.⁵ Fax.com, according to its website, specializes in transmitting its clients' advertisements to telephone facsimile machines whose numbers are contained in the Fax.com database. In its promotional materials, Fax.com also offers to design or improve its clients' advertising copy. The unsolicited facsimile advertisements that were the subject of the *Fax.com NAL* are the product of Fax.com's broadcasting enterprise. Most of the advertisements do not promote products, goods, or services provided by Fax.com but, instead, promote a wide variety of products, goods, or services offered by numerous entities that have employed Fax.com to send their advertisements to telephone facsimile machines.⁶

3. In 2001, after receiving numerous complaints from consumers alleging that they had received unsolicited fax advertisements sent on behalf of six of Fax.com's clients, the Enforcement Bureau of the Commission issued citations to Fax.com pursuant to section 503(b)(5) of the Act.⁷ The Bureau cited Fax.com for violating section 227(b)(1)(C) of the Act by transmitting unsolicited advertisements to consumers' telephone facsimile machines on behalf of the six clients.⁸

4. The TCPA prohibits the delivery of unsolicited advertisements to telephone facsimile machines "so that costs of advertising could not be shifted to the recipients of facsimile

⁵ See *Fax.com, Inc.*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 15,927 (2002) (*Fax.com NAL*). The *Fax.com NAL* was issued pursuant to section 503(b)(1) of the Act, which gives the Commission authority to assess a forfeiture against any person who has "willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act . . ." 47 U.S.C. § 503(b)(1).

⁶ See *Fax.com NAL*, 17 FCC Rcd at 15,928.

⁷ See 47 U.S.C. § 503(b)(5). This section provides that the Commission may not assess a forfeiture penalty against any person that does not hold a license, permit, certificate, or other Commission authorization, and is not an applicant for such instruments, *unless* "(A) such person is first issued a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission nearest to the person's place of residence; and (C) subsequently engages in conduct of the type described in the citation."

⁸ 47 U.S.C. § 227(b)(1)(C). We also issued citations to the following Fax.com clients for alleged violations of section 227 and the Commission's rules and orders: Platinum Travel Club and Teleconcepts Technologies; Colorjet, Inc.; Millenium Marketing and Sales, Ltd.; Website University; US Travel Services, Inc.; and Advanced Cellular Communications, Inc. We did not, however, propose further enforcement action against these companies. *Id.* at 15,929 n.10.

advertisements.”⁹ Section 227(b)(1)(C) of the Act prohibits any person from using “a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.”¹⁰ The Act defines “telephone facsimile machine” as “equipment which has the capacity: (A) to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.”¹¹

5. The Commission warned Fax.com in the citations that it could face monetary forfeitures of up to \$11,000 for each *subsequent* violation if Fax.com either: (1) was “highly involved” on behalf of the sender of *any* unsolicited facsimile advertisements, or (2) continued to transmit advertisements for any of the six named clients without taking steps to ensure that those entities had obtained permission from recipients to fax the advertisements.¹²

6. In response to the citations, Fax.com acknowledged that it had indeed provided the lists of fax numbers to which advertisements were sent for each of the six clients at issue.¹³ Fax.com also conceded that it “has historically taken no steps to verify consent or established business relationships.”¹⁴ It noted, however, that its clients’ advertisements contain a toll-free

⁹ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 10 FCC Rcd 12391, 12405 (1995) (*1995 TCPA Reconsideration Order*) (citing H.R. Rep. No. 317, 102nd Cong., 1st Sess. 25 (1991)).

¹⁰ This blanket prohibition applies to all unsolicited advertisements transmitted to telephone facsimile machines. The Act prohibits the sending of unsolicited advertisements by facsimile to either business or residential telephone facsimile machines. In addition, the prohibition on sending unsolicited fax advertisements applies to both interstate and intrastate transmissions. See 47 U.S.C. § 152(b); 47 U.S.C. § 227(e). Section 227 is not subject to the provision that generally excludes Commission jurisdiction over intrastate matters. Section 227 does not, however, preempt state law that imposes more restrictive intrastate requirements than those set forth in the Act. The Act defines an “unsolicited advertisement” as “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission. 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(5). The Commission originally determined that an established business relationship between a fax sender and recipient demonstrates consent to receive facsimile advertisements. Recently, however, the Commission concluded that an established business relationship does not constitute prior express invitation or permission to send fax advertisements, and that a consumer’s invitation or permission must be recorded in a signed, written statement that contains the telephone number where faxes may be delivered and that clearly evinces the consumer’s agreement to receive fax advertising from the sender. See *2003 TCPA Report & Order*, 18 FCC Rcd at 14,014. The written consent requirement, but not the overall prohibition, was recently stayed, thus reinstating the “established business relationship” option on a temporary basis. *Rules and Regulations Implementing the Telephone Consumer Protections Act of 1991*, FCC 03-230 (rel. Oct. 3, 2003).

¹¹ 47 U.S.C. § 227(b)(1)(C).

¹² See *Fax.com NAL*, 17 FCC Rcd at 15,929.

¹³ Fax.com responded to the citations on January 31, 2001, June 1, 2001, and June 21, 2001, with pleadings filed jointly on behalf of Fax.com and its six cited clients.

¹⁴ See Fax.com January 31 Response at 30; June 1 Response at 31-32; June 21 Response at 30.

“opt-out” number that fax recipients may call if they do not wish to receive additional advertisements.¹⁵

7. Despite our warning to Fax.com, we continued to receive information from consumers indicating that Fax.com was conducting its fax broadcasting activities in a manner that violated section 227(b)(1)(C) of the Act and section 64.1200(a)(3) of the rules.¹⁶ Based on this additional information, which included complaints of unsolicited facsimile advertisements received by 46 individuals, businesses, or government offices¹⁷ between September 2001 and June 2002,¹⁸ the Commission issued the *Fax.com NAL* on August 7, 2002. There, the Commission determined that Fax.com had apparently violated section 227 of the Act and the Commission’s rules and orders by sending unsolicited advertisements to telephone facsimile machines on 489 separate occasions.¹⁹ The Commission also stated that Fax.com’s “primary business itself constitutes a massive on-going violation” of the law, and that Fax.com’s citation responses, as well as publicly available information contained on its website, suggested that Fax.com apparently intentionally and willfully violated the Act and our rules and orders.²⁰ As a result, the Commission determined that Fax.com was apparently liable for a proposed forfeiture of \$5,379,000, the statutory maximum.²¹ Fax.com filed a response to the *Fax.com NAL* on August 21, 2003.²²

¹⁵ January 31 Response at 28-29; June 11 Response at 27; June 21 Response at 27-28. Fax.com asserted that it only transmitted advertisements that contain such an opt-out number. *Id.*

¹⁶ As the Commission noted in the *Fax.com NAL*, several consumers describe being awakened very late at night or in the early hours of the morning by the noise of their fax machines receiving an unsolicited advertisement from a Fax.com client. *See Fax.com NAL*, 17 FCC Rcd at 15,931-32. Some of the consumers also described their unsuccessful -- and frustrating -- efforts to remove their telephone facsimile numbers from Fax.com’s database. *Id.*

¹⁷ Each complainant signed a declaration, under penalty of perjury, attesting that s/he (1) is either the owner of or responsible for the telephone facsimile machine that received the advertisement(s); (2) did not have an established business relationship with either Fax.com or the entity whose products, goods, or services were being advertised; and (3) did not grant prior express permission or invitation for the faxes to be sent. *See Fax.com NAL*, 17 FCC Rcd at 15,931.

¹⁸ In the *Fax.com NAL*, the Commission mistakenly stated that the faxes at issue were received from September 2001 until *March 2002*. *See Fax.com NAL*, 17 FCC Rcd at 15,930 n.17. Table 1 to the *NAL*, however, correctly designates that the transmissions were received from September 2001 until *June 2002*. This mistake does not, however, affect the violations at issue in this order.

¹⁹ In Table 1 to the *Fax.com NAL*, the Commission listed the 489 unsolicited fax advertisements that formed the basis of the *Fax.com NAL*. The Commission explained that the record linked Fax.com with each of the telephone subscribers for (1) the toll-free opt-out telephone numbers that were displayed on each advertisement and/or (2) the telephone facsimile machine numbers from which various advertisements were sent. *See Fax.com NAL*, 17 FCC Rcd at 15,930-31.

²⁰ *See Fax.com NAL*, 17 FCC Rcd at 15,938.

²¹ *See id.* at 15,943.

²² Fax.com Response, Aug. 21, 2003 (Response). Fax.com had longer than the usual 30-day period in which to file its response, *see* 47 C. F.R. § 1.80(f)(3), because of an order issued by the U.S. District Court for the Eastern

8. Subsequent to the release of the *Fax.com NAL*, the Commission issued citations that included letters of inquiry (hereafter, “citations/letters of inquiry”) to 104 businesses that had used Fax.com’s fax broadcasting service to transmit unsolicited advertisements to consumers’ telephone facsimile machines.²³ In these documents, the Commission advised the businesses of the August 7, 2002 *NAL* against Fax.com and informed the businesses of their potential liability for monetary forfeitures if they continued to send unsolicited advertisements to telephone facsimile machines -- either through Fax.com, through some other entity, or on their own. The citations/letters of inquiry also sought information concerning, among other things, the businesses’ involvement with Fax.com. The businesses’ responses to these citations/letters of inquiry are discussed below.

III. DISCUSSION

9. In its Response, Fax.com argues that it should not be found liable because: 1) the prohibition on sending unsolicited facsimile advertisements is unconstitutional under the First and Fifth Amendments to the Constitution; 2) the forfeiture is based on allegations of misconduct that were not sufficiently described in the *NAL*; and 3) the amount of the proposed forfeiture is excessive under the Eighth Amendment. As discussed below, Fax.com’s arguments lack merit.

A. First Amendment Issue

10. Fax.com argues that the TCPA’s ban on sending unsolicited facsimile advertisements violates its constitutional right to free speech under the First Amendment. According to Fax.com, it has raised a colorable challenge to the constitutionality of the Commission’s actions taken pursuant to the TCPA. Fax.com relies primarily on *Missouri v. American Blast Fax*, a subsequently reversed 2002 decision by the U.S. District Court for the Eastern District of Missouri that dismissed an action by the state of Missouri against American Blast Fax and Fax.com for violations of the TCPA on the ground that the prohibition infringed on

District of Missouri on August 29, 2002, staying the *Fax.com* forfeiture proceeding until further notice. See discussion *infra* at paragraph 10. On August 26, 2003, after reversal of that decision, Fax.com supplemented its response with a supporting declaration from Kevin Katz, the President of Fax.com. See Fax.com Supplement to Response, filed Aug. 26, 2003. On September 11, 2003, pursuant to a request from Fax.com’s attorney, Commission staff granted Fax.com an additional 10 business days to review the record of the forfeiture proceeding and file any necessary supplemental response. In a letter filed on September 15, 2003, Fax.com argued that 10 days was not an adequate period of time for it to obtain and review all of the evidence of record, and to prepare a response. See Letter from Harry F. Cole, counsel for Fax.com, to Colleen A. Heitkamp, Chief, TCD, Sept. 15, 2003. In an effort to allow Fax.com to develop a more complete response to the *Fax.com NAL*, Commission staff granted Fax.com an additional 10 business days to review the record and file any supplementary response. See Letter from Colleen A. Heitkamp, Chief, TCD, to Harry F. Cole, counsel for Fax.com, Oct. 8, 2003. Fax.com filed its supplementary response on Oct. 20, 2003. In total, Fax.com had 90 days from the date on which the forfeiture proceeding recommenced in which to file a complete response to the *Fax.com NAL*.

²³ See, e.g., *Market Wizard Alerts*, Citation and Letter of Inquiry, TCD (Aug. 13, 2002); *Burt Custom Finance*, Citation and Letter of Inquiry, TCD (Aug. 13, 2002).

the defendant's First Amendment rights.²⁴ The U.S. Court of Appeals for the Eighth Circuit determined that the TCPA does *not* violate Fax.com's First Amendment free speech protections. The court found that the government had demonstrated a legitimate interest in restricting unwanted facsimile advertising to prevent the shifting of advertising costs to unwilling consumers and interference with the reception of their facsimile machines.²⁵ The Eighth Circuit also rejected the argument that the TCPA was unconstitutional because it treated commercial speech differently, deferring to Congress' determination in enacting the TCPA, that "noncommercial calls are less intrusive to consumers because they are more expected."²⁶ For the reasons set forth in that decision, as well as other court decisions on point,²⁷ we conclude that the prohibition on unsolicited commercial faxes is constitutional under the First Amendment.

11. We also find that Fax.com's erroneous belief that its violations were permissible under the First Amendment, whether colorable or not, does not insulate it from enforcement action. Fax.com transmitted nearly 90 percent of the facsimiles that form the basis for our forfeiture action *before* the Missouri court issued its ruling -- at a time when Fax.com could not have been relying on the Missouri court's erroneous decision. Further, Fax.com is well aware that prior to the Missouri court's ruling, and since that decision was overturned, federal legal precedent has fully supported the constitutionality of the TCPA.²⁸ We followed this clear precedent in issuing citations to Fax.com that warned the company that it was engaging in unlawful conduct that could subject it to monetary forfeitures for future violations.²⁹ With respect to these pre-Missouri decision faxes, Fax.com thus knew, or should have known, that its fax broadcasting activities violated the TCPA and could result in the assessment of a forfeiture.

²⁴ *Missouri ex. rel. Nixon v. American Blast Fax, Inc & Fax.com, Inc.*, 196 F. Supp.2d 920, 933 (E.D. Mo. 2002) (*American Blast Fax*). In *American Blast Fax*, in which the Commission and the United States intervened to defend the constitutionality of the TCPA's fax restriction, the district court determined, among other things, that the government had failed to meet its burden of demonstrating that the harms from unsolicited advertisements were significant, and that the restriction on unsolicited commercial advertising would alleviate them to a material degree. *American Blast Fax*, 196 F.Supp. at 933. The government appealed, and the district court issued a stay of the Fax.com forfeiture proceeding, pending further judicial proceedings. On September 6, 2002, Commission staff notified those companies to which it had issued or planned to issue citations and letters of inquiry in connection with the Fax.com NAL that they need not respond until further notice. *See supra* footnote 22.

²⁵ *Id.* at 655.

²⁶ *Id.*

²⁷ *See Destination Ventures v. FCC*, 46 F.3d 54, 55-57 (9th Cir. 1995) (ban on unsolicited fax advertisements does not violate the advertiser's First Amendment rights because it reasonably fits the government's interest in preventing the shifting of advertising costs to consumers); *Minnesota v. Sunbelt Communications and Marketing*, 282 F. Supp. 2d 976, 981-84 (D.Minn. 2002); *Texas v. American Blast Fax*, 121 F. Supp. 2d 1085, 1091-92 (W.D. Tex. 2000); *Kenro, Inc. v. Fax Daily, Inc.*, 962 F.Supp. 1162, 1167-69 (S.D. Ind. 1997) (ban on unsolicited fax advertisements is narrowly tailored to achieve the government's intended purpose and does not violate the First Amendment guarantee of commercial free speech).

²⁸ *See Fax.com NAL*, 17 FCC Rcd at 15,939; *see also supra* footnote 27; *infra* footnote 31.

²⁹ *See id.*

Consequently, we find no merit in Fax.com's contention that, based on the subsequently issued and subsequently reversed Missouri district court's ruling, Fax.com's conduct prior to that erroneous ruling did not warrant enforcement action.³⁰

12. Moreover, the faxes that Fax.com sent *after* the Missouri court's ruling represent a *continuation* of the company's unlawful activity, rather than any "reliance" on the ruling in the Missouri case. The fact that Fax.com *continued* this pattern of misconduct -- despite our warning citations and the court cases confirming the statutory prohibition on unsolicited fax advertising -- demonstrates Fax.com's utter disregard for the law or, at the very least, its conscious decision to accept the risk that the anomalous Missouri district court ruling would be overturned, which it was. Moreover, as we observed in the *NAL*, the Missouri court's ruling was not germane to the *Fax.com NAL* because, to our knowledge, none of the fax transmissions for which we assessed forfeitures *was received in or sent from* the eastern judicial district of Missouri, a fact that Fax.com has not disputed.³¹ In short, Fax.com's First Amendment argument is without support in fact or law.

B. Vagueness Issue

³⁰ Response at 5.

³¹ *Id.* The Commission and the United States intervened in the *American Blast Fax* case to defend the constitutionality of the TCPA's fax advertising restriction. Despite the Missouri district court's ruling in favor of Fax.com in that forum, every other federal court that considered the constitutionality of the fax advertising restriction, both before and after the Missouri court's ruling, found the restriction constitutional. *See Destination Ventures v. FCC*, 46 F.3d 54, 55-57 (9th Cir. 1995) (ban on unsolicited fax advertisements does not violate the advertiser's First Amendment rights because it reasonably fits the government's interest in preventing the shifting of advertising costs to consumers); *Minnesota v. Sunbelt Communications and Marketing*, 282 F.Supp.2d 976, 981-84 (D.Minn. 2002); *Texas v. American Blast Fax*, 121 F. Supp. 2d 1085, 1091-92 (W.D. Tex. 2000); *Kenro, Inc. v. Fax Daily, Inc.*, 962 F.Supp. 1162, 1167-69 (S.D. Ind. 1997) (ban on unsolicited fax advertisements is narrowly tailored to achieve the government's intended purpose and does not violate the First Amendment guarantee of commercial free speech). State courts have also overwhelmingly upheld the legal validity of the restriction. *Texas v. Fax.com, Inc.*, No A-02-CA-080 JN, Report and Recommendation (W.D. Tex. May 23, 2003); *Covington & Burling v. International Marketing & Research, Inc.*, Civ. No. 01-4360, Order (D.C. Super Ct. Apr. 17, 2003); *Whiting Corp. v. MSI Marketing, Inc.*, No. 02 CH 6332, Opinion and Order (Ill. Circ. Ct. Apr. 3, 2003); *Mark Chair Co. v. Mortgage Managers, Inc.*, Case No. 02 LK 247, Order (Ill. Circ. Ct. Dec. 20, 2002); *Levitt v. Fax.com, Inc.*, No. 42-C-01-2218, Memorandum Opinion and Order (Md. Circ. Ct. Nov. 27, 2002); *Robin Hill Development Co. v. JD&T Enterprises, Inc.*, No. 01 L 527, Order (Ill. Circ. Ct. Oct. 3, 2002); *Micro Engineering, Inc. v. St. Louis Assoc. of Credit Mgmt., Inc.*, Cause No. 02AC-008238 X CV, Order (Mo. Circ. Ct. Aug. 13, 2002); *Kaufman v. ACS Sys., Inc.*, Case No. BC222588, Decision (Cal. Super. Ct. Dec 12, 2001). *But see Bonime v. Perry Johnson, Inc.*, No. 61977/01, Decision and Order (N.Y. Civ. Ct. 2002) (relying on *American Blast Fax* district court ruling, since reversed), *appeal pending*; *Rudgayzer & Gratt v. Enine, Inc.*, 193 Misc.2d 449 (N.Y. Civ. Ct. 2002) (relying on *American Blast Fax* district court ruling, since reversed), *appeal pending*. To have considered the Missouri court's decision binding on nationwide federal enforcement of the restriction would have resulted in nullification of every other court's constitutional decisions to the contrary, and would have created a gross legal inequity that would have left only Fax.com and its clients immune from federal enforcement. Such "immunity" from FCC (or state and private right of action) enforcement would clearly contravene Congress's goals in enacting the TCPA. Even if the Missouri district court's decision had not been reversed, it would not have affected all other judicial decisions to the contrary.

13. Fax.com also contends that the TCPA is unconstitutional under the “void for vagueness” doctrine because the statute fails to give potential fax senders adequate warning of the conduct it proscribes or which entities may be found liable under the Act.³² Fax.com asserts that “the TCPA fails to specify what parties may be liable under the Act.”³³ Fax.com also maintains that it is “often impossible for an ordinary person to determine whether a fax advertises ‘the commercial availability or quality of any property, goods or services’ and thus is prohibited by the TCPA.”³⁴ These claims too are without merit.

14. Only a statute that “either forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application” is considered void for vagueness under the Fifth Amendment; the government must “articulate its aims with a reasonable degree of clarity.”³⁵ We disagree with Fax.com’s arguments that the TCPA’s commercial fax solicitation ban fails to meet this test or that it is insufficiently precise to ensure that it is not enforced in an arbitrary or discriminatory manner.³⁶ We have no doubt that the TCPA provides more than such reasonable clarity and precision for persons of common intelligence. Indeed, since we first warned Fax.com specifically with our citations that its activities violated the law, Fax.com has been apprised of the fact that its faxes were prohibited by the TCPA. Fax.com therefore knew, or clearly should have known, what was necessary to avoid continuing to violate the TCPA. Fax.com cannot now credibly argue that it did not know what conduct the TCPA prohibited.

C. Sufficiency of the Record

15. Fax.com next contends that it cannot be held liable for the proposed forfeiture because the *NAL* is based “in substantial part on allegations of misconduct which have not previously been raised [and] which are not sufficiently described in the *NAL* to permit Fax.com to respond.”³⁷

³² See Response at 5-6.

³³ *Id.* at 8.

³⁴ *Id.*

³⁵ *Roberts v. United States Jaycees*, 468 U.S. 609, 629, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984).

³⁶ Fax.com asserts that the court in *Texas v. American Blast Fax* rejected our interpretation of who is liable under the TCPA for unsolicited fax advertising – fax broadcasters or the underlying advertiser. See Response at 8 (citing *Texas v. American Blast Fax*, 121 F. Supp. 2d 1085, 1090-92 (W.D. Tex. 2000)). In fact, the court simply chose to follow the explicit statutory language of the TCPA rather than a Commission order. See 121 F. Supp. 2d at 1089 (noting that the TCPA says that “any person” sending unsolicited fax advertisements is liable). This led the court to exactly the same conclusion that we reach here – that a fax broadcaster that serves as “more than a mere conduit for third party faxes” is liable under the TCPA. See *id.* at 1089-90 & n. 6 (under the allegations in the case, the fax broadcaster at issue “does more than ‘simply provide transmission facilities’ for the faxes at issue”) (citing *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 7 FCC Rcd 8752 (1992) and the *1995 TCPA Reconsideration Order*).

³⁷ See Response at Introduction, ii.

16. Fax.com is incorrect. As a threshold matter, the staff's citations provided Fax.com with *actual notice* that its fax broadcasting activities violated federal law -- as well as a warning that future misconduct would not be tolerated.³⁸ Fax.com cannot now feign ignorance that its behavior would result in penalty. Moreover, the staff's citations informed Fax.com that *the very nature of its business* -- the practice of sending unsolicited fax advertisements -- was in flagrant violation of the TCPA. Despite such notification, Fax.com continued its pattern of misconduct, as evidenced by the numerous consumer complaints that formed the basis for the *NAL*.³⁹

17. Nor do we find merit in Fax.com's claim that its misconduct was not "sufficiently described" in the *NAL* to permit it to respond in an appropriate manner.⁴⁰ Fax.com credits the Commission with attaching copies of specific faxes to the citations ("so that Fax.com had the opportunity to review those faxes and respond to them with particularity...").⁴¹ By contrast, Fax.com complains, the Commission did not attach copies of the 489 suspect faxes to the *NAL*, instead providing the following information for each fax: the name of the recipient; the date of transmission; the name of the entity whose property, goods or services were advertised; and the toll-free opt-out numbers, each traced to Fax.com, that appeared on the face of the advertisements. Fax.com contends that, without copies of the 489 faxes, it is not able to "confirm or deny whether any of the allegedly violative faxes listed in the table were in fact sent by Fax.com."⁴²

18. Contrary to Fax.com's contentions, the *Fax.com NAL* described in detail the evidence upon which the proposed forfeiture was based, including the numerous consumer complaints; the sworn declarations filed in support of these complaints; and the unsolicited advertisements that Fax.com sent to the complainants' facsimile machines.⁴³ Indeed, the *NAL* contained all the information required by section 503(b)(4) of the Act.⁴⁴ Beyond these basic

³⁸ See, e.g., *Decorize, Inc.*, Citation and Letter of Inquiry, TCD, Aug. 15, 2002.

³⁹ See *Fax.com NAL*, 17 FCC Rcd at 15,939.

⁴⁰ See *id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ See *Fax.com NAL*, 17 FCC Rcd at 15,931-33.

⁴⁴ 47 U.S.C. § 503(b)(4). This subsection requires, *inter alia*, that the Commission issue a written notice of apparent liability or a notice of opportunity for hearing prior to assessing a forfeiture. Such a notice must identify the legal provision that has apparently been violated, set out the nature of the act or omission and the underlying facts, and must state the date on which the apparently unlawful conduct occurred. In the instant proceeding, we complied with these requirements.

statutory requirements, it is within the Commission's discretion to present the evidence in the most useful format.⁴⁵ Moreover, each document cited in the *NAL*, including copies of all 489 faxes, has been available for Fax.com to examine since the issuance of the *NAL*. Indeed, the record of every forfeiture proceeding is available to alleged violators.⁴⁶ Hence, Fax.com could easily have obtained copies of any or all of the faxes listed in Table 1 to the *NAL*.⁴⁷

19. Without having reviewed the faxes at issue, Fax.com questions, in its initial Response to the *NAL*, the Commission's determination that Fax.com transmitted the faxes listed in Table 1 to the *NAL*.⁴⁸ Fax.com asserts that neither the toll-free opt-out numbers displayed in the allegedly violative faxes, nor the telephone fax number displayed in many of the headers of these faxes, establish that Fax.com sent out the faxes at issue.⁴⁹ Significantly, however, Fax.com does not directly deny that it sent the faxes at issue.

20. Fax.com reiterates these arguments in a "Second Supplement" to its Response, which it filed after obtaining and reviewing the materials cited in the *Fax.com NAL*. These materials included all of the complaints that formed the basis for the *NAL*, as well as all associated faxes. Despite its review of the record, however, Fax.com continues to advance its unsupported assertions, and, once again, fails to provide any specific information to counter the Commission's findings that Fax.com sent the faxes at issue, and that these faxes constitute prohibited advertisements as defined in section 227 of the Act and the Commission's rules and orders.⁵⁰

21. Further, Fax.com does not dispute the Commission's finding that Fax.com's toll-free opt-out numbers appear on each prohibited advertisement. Indeed, as the Commission noted

⁴⁵ See *Business Discount Plan, Inc.*, Order on Reconsideration, 15 FCC Rcd 24,396; 24,401 (2000).

⁴⁶ The Commission does not disclose documents that would interfere with ongoing law enforcement efforts, reveal the Commission's internal deliberative process, or compromise the Commission's attorney-client or attorney work product privileges. See 47 U.S.C. §§ 552(B)(5), (7). Otherwise, virtually all of the materials underpinning an *NAL* are available upon request for public review. In some cases, including this one, certain information is withheld from public inspection to protect the personal privacy of individuals who have provided information to the Commission. For instance, in this case, we do not publicly disclose the home telephone numbers of individuals who received Fax.com's transmissions.

⁴⁷ Notwithstanding the opportunity afforded Fax.com to review this evidence upon the issuance of the *NAL*, the Commission granted Fax.com additional time for to obtain and review the record of the proceeding and to file any supplemental response to the *NAL*. See *supra* footnote 20.

⁴⁸ Response at 16.

⁴⁹ *Id.*

⁵⁰ See Second Supplement to Response of Fax.com, filed Oct. 20, 2003. Specifically, Fax.com asserts, without any further explanation or proof, that "[r]eview of the materials [that were cited in the *Fax.com NAL*] confirms the validity of the arguments presented by Fax.com in its [initial] Response [to the *Fax.com NAL*]. The Commission has no reliable basis for its allegations against Fax.com." Second Supplement to Response at 1.

in the *NAL*, the wording of Fax.com's opt-out notices, and the fact that these notices were included in advertisements for individual entities, is a transparent attempt to deceive consumers into believing that the opt-out numbers were associated with individual advertisers rather than with Fax.com.⁵¹ Nor does Fax.com dispute the Commission's conclusion that Fax.com was the subscriber for the opt-out numbers at the time the faxes were sent. Fax.com also fails to present evidence to counter our finding that Fax.com held the telephone number printed on at least one client's advertisement as the contact number for the advertised product.

22. In sum, the record before us confirms Fax.com's direct involvement in the fax transmissions at issue. Despite this clear evidence, Fax.com speculates that some of these businesses may have appropriated Fax.com's toll-free numbers and unlawfully tampered with the originating facsimile machines to falsify automatic identification data - - either inadvertently, or with the purpose of sending faxes that would be attributed to Fax.com. We find such speculation to be disingenuous, considering that Fax.com has not directly denied sending the faxes at issue. Moreover, the record contains abundant evidence from Fax.com's own clients that confirms Fax.com's involvement in the fax transmissions at issue.⁵²

23. As noted above, the Commission sought additional information after the release of the *Fax.com NAL* by issuing citations and letters of inquiry to businesses that had hired Fax.com to transmit unsolicited advertisements on their behalf to consumers' telephone facsimile machines. The Commission advised the businesses of the August 7, 2002 *NAL* against Fax.com and informed them of their potential liability for monetary forfeitures if they continued to send unsolicited advertisements to telephone facsimile machines, either through Fax.com, through some other entity, or on their own.⁵³

24. The businesses' responses, which we have incorporated into the record, provide additional evidence that Fax.com transmitted the faxes at issue in the *NAL*. For example, the response from Direct Source Copiers, Inc., one of Fax.com's clients, confirms that not only did Fax.com transmit unsolicited advertisements on behalf of Direct Source Copiers, but Fax.com also went to great lengths to *deceive* Direct Source copiers into facilitating Fax.com's unlawful activities. According to Direct Source Copiers' president, Fax.com initially told Direct Source Copiers that Fax.com's activities complied with federal law. Then, after the Commission issued the *Fax.com NAL*, Fax.com continued to assure Direct Source Copiers that it offered clients a "fully legal service," and that Fax.com had "prior permission" to send fax ads on Direct Source Copiers' behalf to the contacts in Fax.com's database - statements that are blatantly false, as the

⁵¹ *Fax.com NAL*, 17 FCC Rcd at 15938 n.47.

⁵² *See infra* footnotes 53-57. Many of those clients submitted copies of contracts with Fax.com that included "indemnification provisions" whereby Fax.com assured the businesses that the fax transmissions were lawful, and agreed to represent the businesses in any legal actions for TCPA violations. These indemnification provisions are entirely inconsistent with Fax.com's position that advertisers acted alone to send the faxes at issue.

⁵³ *See Fax.com NAL*, 17 FCC Rcd at 15,937.

consumer declarations demonstrate. As Direct Source Copiers later learned, the “contacts” in Fax.com’s database had *not* given Fax.com permission to receive fax advertising.⁵⁴

25. The response from Quality Auto Mart also illustrates Fax.com’s unscrupulous practices.⁵⁵ In a response to the Commission’s citation letter, the president of Quality Auto Mart recounts how he had to demand that Fax.com stop sending faxes on his company’s behalf after learning that the opt-out numbers that Fax.com had printed on his company’s faxes were not working numbers.⁵⁶ Similarly, John Jurcisin, D.P.M, and Great West Funding explain that they eventually realized that Fax.com’s service was unlawful, despite Fax.com’s claims that it was in compliance with state and federal requirements.⁵⁷ Both companies were forced to demand that Fax.com cease its unlawful activities.⁵⁸ In light of such responses and the other evidence of record, we affirm the Commission’s determination that the 489 faxes detailed in Table 1 to the *Fax.com NAL* are unlawful unsolicited advertisements, and that Fax.com sent the faxes at issue.

D. Appropriateness of Assessed Forfeiture Amount

26. As discussed in the *Fax.com NAL*, section 503(b) of the Act authorizes the Commission to assess a forfeiture of up to \$11,000 for each violation of the Act or of any rule, regulation or order issued by the Commission under the Act by a non-common carrier or other entity not specifically designated in section 503 of the Act.⁵⁹ In exercising such authority, we have the discretion to apply an upward adjustment of the forfeiture amount based on the particular facts and circumstances of the violation(s).⁶⁰ In the *Fax.com NAL*, we noted that the

⁵⁴ *Direct Source Copiers, Inc.*, Response to Citation, filed Oct. 20, 2003. While some of the businesses we cited did not recall doing business *directly* with Fax.com, the record demonstrates that, in many instances, these businesses contracted with marketing or advertising firms that, in turn, had used Fax.com’s fax services. Hence, many businesses were unaware that Fax.com was ultimately responsible for transmitting their unsolicited advertisements.

⁵⁵ *Quality Auto Mart*, Response to Citation, filed Aug. 30, 2002.

⁵⁶ *See id.*

⁵⁷ *See John Jurcisin, D.P.M.*, Response to Citation, filed Sept. 10, 2002; *Great West Funding*, Response to Citation, filed Oct. 3, 2003. *See also American Marble Liquidators, Inc.*, Response to Citation, filed Nov. 10, 2003.

⁵⁸ *See id.*

⁵⁹ *See* section 503(b)(2)(C). This section provides for forfeitures up to \$10,000 for each violation for cases not covered by subparagraph (A) or (B), which address forfeitures for violations by licensees and common carriers, among others. 47 U.S.C. § 503(b)(2)(C). In accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, Pub. L. 104-134, Sec. 31001, 110 Sta. 1321, the Commission implemented an increase of the maximum statutory forfeiture under section 503(b)(2)(C) to \$11,000. *See* 47 C.F.R. § 1.80(b)(3); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000).

⁶⁰ *See* 47 U.S.C. § 503(b)(2)(D); *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission’s Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17100-17101 (1997), *recon. denied*, 15 RCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

Commission had previously considered \$4,500 per unsolicited fax advertisement as an appropriate base amount,⁶¹ which the Commission has adjusted upwards to \$10,000 per unsolicited fax advertisement in those instances where the fax recipient had previously asked the sender to refrain from faxing the materials.⁶² In the instant case, we assessed the maximum forfeiture of \$11,000 per unsolicited fax advertisement, based upon evidence that Fax.com's business itself is predicated upon a knowing and willful violation of the federal restrictions on fax advertising contained in the Act and the Commission's rules and orders.⁶³

27. Fax.com contends that our proposed forfeiture violates the due process guarantee of the Fifth Amendment and the excessive penalties clause of the Eighth Amendment to the Constitution.⁶⁴ Fax.com argues that forfeitures such as those considered in the *Fax.com NAL* "can go so far beyond the actual damages suffered that the statutory damages come to resemble punitive damages."⁶⁵ Fax.com also asserts that our proposed forfeiture is disproportionate because it is "220,000 times the harm alleged," which Fax.com calculates at "pennies a page in paper and toner."⁶⁶ Finally, Fax.com contends that in the *Fax.com NAL*, we relied upon "supposedly non-decisional" information of "dubious reliability" to conclude that the maximum forfeiture is warranted for Fax.com's egregious conduct. Fax.com characterizes our forfeiture rationale as "at best disingenuous, if not affirmatively misleading," and requests that we reissue an NAL that does not describe such conduct.⁶⁷

⁶¹ See *Fax.com NAL*, 17 FCC Rcd at 15,942 (citing *Get-Aways, Inc.*, Notice of Apparent Liability For Forfeiture, 15 FCC Rcd. 1805, 1812 (1999)); see also *Carolina Liquidators, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 16837, 16842 (2000) (*Carolina Liquidators NAL*); *Tri-Star Marketing*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 11295, 11300 (2000) (*Tri-Star NAL*); *US Notary, Inc.* Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 16999, 17003 (2000).

⁶² *Fax.com NAL*, 17 FCC Rcd at 15,942 (citing *Carolina Liquidators NAL*, 15 FCC Rcd at 16842; *Tri-Star NAL*, 15 FCC Rcd at 11300). In the *Fax.com NAL*, the Commission also noted several instances in which Fax.com apparently continued to fax unsolicited advertisements to consumers even after they attempted to stop such faxes by calling *one or more* of Fax.com's opt-out numbers. *Id.* at 15,933.

⁶³ See *Fax.com NAL*, 17 FCC Rcd at 15,942.

⁶⁴ See Response at 9-14.

⁶⁵ *Id.* at 10.

⁶⁶ *Id.* at 12-13. Fax.com ignores the substantial expense and disruption that can occur when businesses are blanketed with large numbers of unsolicited faxes. See *Fax.com NAL*, 17 FCC Rcd at 15,931-32 (describing publicly available reports of how, *inter alia*, Fax.com transmissions not at issue in this proceeding interfered with work at a law firm that received over 1,500 faxes from Fax.com during one week, and shut down fax servers at two other businesses).

⁶⁷ See Response at 18.

28. Contrary to Fax.com's argument, the fact that we described numerous examples of Fax.com's egregious conduct in addition to the 489 violative faxes does not mean that these examples formed the sole basis for our decision to impose the maximum forfeiture. Indeed, we specifically stated:

It is clear from Fax.com's own promotional materials and its responses to our citations that Fax.com's primary business activity itself constitutes a massive ongoing violation of section 227(b)(1)(C) of the Act and section 64.1200(a)(3) of the Commission's rules, and that Fax.com is well aware of this fact. Fax.com's primary commercial offering is a fax broadcasting service that clearly does not comply with federal restrictions governing facsimile advertisements. As outlined above, by its own admission and as demonstrated by the consumer information, Fax.com generally conducts its fax broadcasting without any regard to whether the fax recipient has an established business relationship with either Fax.com or the advertiser, or has otherwise granted express permission for the advertisement to be sent. We conclude that this unlawful undertaking merits maximum forfeitures for each of the violations at issue here. *Although we believe that the nature of Fax.com's enterprise by itself warrants imposition of a maximum forfeiture for each violation, we discuss below the particularly egregious aspects of Fax.com's conduct.*⁶⁸

Fax.com's insistence that we reissue the *NAL* without descriptions of Fax.com's egregious conduct is clearly unavailing. The *Fax.com NAL* proposed the maximum forfeiture for each of the 489 violative faxes because of Fax.com's fax broadcasting activities, which, by Fax.com's own admission, were undertaken without regard to the requirements of federal law.⁶⁹ Any other aspects of Fax.com's business activities that are described in the *NAL* were not of decisional significance in setting the forfeiture amount, and we clearly emphasized this fact. We are entitled to include such publicly available "background" information in our orders, as long as any proposed penalties are fully supported by the evidence of record. In the instant proceeding, we cited *extensive* record evidence to support our proposed forfeiture. Even after finally taking advantage of the opportunity to review these cited materials, which have been available for public inspection since August 7, 2002, Fax.com continues to attack our conclusions without addressing any specific supporting materials or providing *any* information to discredit our extensive documentation.⁷⁰

29. Further, we find that Fax.com's constitutional arguments reflect a fundamental misunderstanding of the purpose of Commission forfeiture policies and procedures. Forfeitures are not meant to serve as compensatory damages for harms caused, but rather are meant to penalize unlawful activity. In the instant proceeding, we sought to penalize Fax.com for its egregiously unlawful conduct. As detailed in the *Fax.com NAL*, Fax.com not only subjected

⁶⁸ *Fax.com NAL*, 17 FCC Rcd at 15,938 (emphasis added, footnote omitted).

⁶⁹ *See supra* paragraph 4.

⁷⁰ *See* Second Supplement to Response of Fax.com, Inc. at 1-2.

consumers to greater numbers of unlawful faxes, its deceptive marketing also left its predominantly small business clients vulnerable to federal, state, and private enforcement actions that may involve substantial monetary penalties. The record further demonstrates that Fax.com failed to disclose to its clients the broad prohibition on faxing unsolicited advertisements imposed by section 227 of the Act and the Commission's rules and orders. Fax.com also affirmatively misstated federal law governing unsolicited facsimile advertisements. In light of Fax.com's egregiously unlawful activity, we conclude that our proposed forfeiture did not violate Fax.com's constitutional rights.

30. Moreover, the Supreme Court has held that a penalty violates due process only when it is "so severe and oppressive as to be wholly disproportionate to the offense, and obviously unreasonable."⁷¹ In the instant proceeding, we carefully calculated the proposed forfeiture *in direct proportion to Fax.com's offense*, which, as discussed above, was in flagrant violation of the law. Hence, we affirm our conclusion in the *NAL* that Fax.com's unlawful undertaking merited the maximum forfeiture for each of the violations at issue --particularly because the illegal nature of Fax.com's enterprise *by itself* warrants imposition of the maximum forfeiture for each violation.

IV. CONCLUSION AND ORDERING CLAUSES

31. After reviewing the information filed by Fax.com in its Responses to the *NAL*, we find that Fax.com has failed to identify facts or circumstances to persuade us that there is any basis for modifying the forfeiture proposed in the *Fax.com NAL*. As discussed above, Fax.com has not shown any mitigating circumstances sufficient to warrant a reduction of the forfeiture penalty.

32. Accordingly, IT IS ORDERED, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 (f)(4) of the Commission's rules, 47 C.F.R. § 1.80(f)(4), that Fax.com, Inc. SHALL FORFEIT to the United States Government the sum of \$5,379,000 for willfully and repeatedly violating section 227 of the Act, 47 U.S.C. § 227, section 64.1200 of the Commission's rules, 47 C.F.R. § 64.1200, and the Commission's orders concerning the Telephone Consumer Protection Act.⁷²

33. IT IS FURTHER ORDERED that a copy of this Order of Forfeiture SHALL BE SENT by certified mail to Kevin Katz, President, Fax.com, Inc., 120 Columbia Street, Suite 500,

⁷¹ See *St. Louis, Iron Mt. & S. Ry. Co. v. Williams*, 251 U.S. 63, 67, 40 S.Ct. 71, 73, 64 L.Ed. 139 (1919) (*Williams*).

⁷² The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. Fax.com should include the reference, "NAL/Acct. No. 200232170004" on Fax.com's check or money order. Such remittance must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554. See 47 C.F.R. § 1.1914.

Aliso Viejo, California 92656 and Kevin Katz, President, Fax.com, Inc., 30872 South Coastal Highway, Suite 201, Laguna Beach, California 92651. In addition, IT IS FURTHER ORDERED that a copy of this Order of Forfeiture SHALL BE SENT by certified mail to Harry F. Cole, Esquire, Fletcher, Heald & Hildreth P.L.C., 1300 N. 17th Street – 11th Floor, Arlington, VA 22209, and Mary Ann L. Wymore, Esquire, Greensfelder, Hemker & Gale, P.C., 10 South Broadway, Suite 2000, St. Louis, Missouri 63102, Fax.com's attorneys of record.

34. IT IS FURTHER ORDERED that a copy of this Order of Forfeiture SHALL BE SENT by certified mail to the following affiliated entities, successors or assigns of Fax.com, Inc.:

Tech Access Systems Corporation, 280 W. Sierra Madre Blvd., #231, Sierra Madre, California 91024; Tech Access Systems Corporation, 521 ½ South Myrtle Avenue, Suite 1, Monrovia, California 91016; Telecom Tech Support, 26081 Merit Circle, #112, Laguna Hills, California 92653; Telecom Tech Support c/o Robert Battaglia, 3621 Vista Campana South, Oceanside, California 92057; Everglades Enterprises, c/o Cozen & O'Connor, 200 Four Falls Corp Center, #400, Conshohocken, Pennsylvania 19428 (Attention: Shari Odenheimer); Everglades Enterprises, c/o Joe Garson, 352 South Canon Drive, Beverly Hills, California 90212; Lighthouse Marketing, LLC, 23411 Laguna Hills Drive, Suite K25, Aliso Viejo, California 92656; Lighthouse Marketing, LLC, 15440 Laguna Canyon Road, Irvine, California 92618; Impact Marketing Solutions, LLC, 5404 Alton Parkway, Suite 5A #114, Irvine, California 92604; Impact Marketing Solutions, LLC, 15440 Laguna Canyon Road, Irvine, California 92618; Data Research Systems, Inc., 26895 Aliso Creek Road, Suite B #681, Aliso Viejo, California 92656; Data Research Systems, Inc., 92 Argonaut, Aliso Viejo, California 92656; and its attorney of record, David Felsenthal, Esquire, 1900 Avenue of the Stars, Lost Angeles, California 90067.

35. IT IS FURTHER ORDERED that Fax.com, Inc. SHALL FILE a report with the Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, within 30 days from the release of this Order, on whether it has come into compliance with the Act and our rules and orders as cited in this Order of Forfeiture; such report shall encompass the activities of all persons and entities described in footnote 1, *supra*.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary